The defendant elected to say nothing. He was thereupon convicted on both the charges and fined $100 on each charge and suffered the statutory disqualification for driving for 12 months.

I am quite certain that if the defendant had been tried together with the employer and that the learned magistrate had all the facts before him he would not have imposed so heavy a fine on the paid driver who was merely doing what he was told probably well knowing that if he refused he would lose his employment. At the same time, had the learned magistrate who tried the employer known the full circumstances I am equally certain that he would have fined him double the amount which he in fact imposed at least. In fact he imposed the same amounts that his learned colleague had imposed on the paid driver. I cannot understand why the police, who have been told time and time again, continue to charge employer (if they bother to charge him at all) and driver separately. Finally I cannot understand why traffic cases are left to be prosecuted by very junior and apparently inexperienced police officers. They are important cases. Road discipline and the observance of the law contained in the Road Traffic Ordinance are necessary for the protection of the public from maiming or worse.

Since there was not one iota of evidence produced to establish a *prima facie* case that the defendant was driving a motor vehicle without there being in force a valid certificate of insurance as required by section 74 of the Road Traffic Ordinance, the conviction on the second charge is quashed. The fine of $100 if paid must be repaid, and the order of disqualification set aside.

Secondly, as the magistrate had not all the facts before him, I feel that the fine on the 1st charge is manifestly excessive in view of the fact that he was a paid driver, and acting under orders from his employer. I confirm the conviction but I reduce the fine to $50, the balance of $50 if paid must also be repaid.

I hope that in the future both employer and employee will be jointly tried and that magistrates will realise that the employer bears the greater responsibility and should be fined to hurt his pocket so that he does not set off profit by using his vehicle illegally against the fine and is still able to show a profit.

Order: 1st Charge Conviction confirmed. Fine varied to $50, balance if paid to be refunded.

2nd Charge: Conviction quashed. Order of disqualification be and is hereby set aside. Fine of $100 if paid to be refunded.

Order accordingly.

MOHAMED YUSOF v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) July 12, 1962]

[J.B. — Criminal Appeal No. 12 of 1962]

Criminal Law and Procedure — Negligence by fire — Charge under first part of s.285, Penal Code — Degree of negligence necessary for conviction — Whether same as that in a civil action for damages — Amendment of charge under s.173(h), Criminal Procedure Code (Cap. 6).

For a conviction under the first limb of section 285 of the Penal Code, the negligence of the accused must amount to a degree which is criminal. There must be evidence of an act or omission which indicates a high degree of rashness or negligence. It must be more than a mere act or omission sufficient upon which to base a claim for damages in an action for negligence in a civil court.

CRIMINAL APPEAL.

John Pillai for the appellant.

Raja Azlan Shah (Deputy Public Prosecutor) for the respondent.

Adams J. (delivering oral judgment): The accused stands charged as follows:

"That you on 8.2.62 at about 3.00 p.m. at 53 m.s. Jalan Batu Pahat, Sri Lallang, in the District of Kluang, in the State of Johore, did an act with fire so negligently as to endanger human life and that you have thereby committed an offence punishable under section 285 of the Penal Code."

He was tried before the learned Magistrate sitting at Kluang. He was convicted and fined $100 in default thereof one month's imprisonment. The fine was paid.

The facts are very simple. The complainant, Kanda bin Tatil is a small holder owning about three acres of rubber at the 5th mile Sri Lallang. On the 8th February, 1962, when he was passing his estate he noticed a large fire on his estate and also on that of the accused's estate which abuts the complainant's, he also saw the accused there. He is alleged to have told the complainant and the witness, Arshad bin Hj. Asha'ari that he was burning the belukar and lallang on his estate. The witness, Arshad said that at the time he saw the accused the complainant's estate was not on fire. The wind was moderate, but the fire on the accused's estate was a large one which could cause danger to life and property.

What the learned Magistrate has overlooked is that the negligence must amount to a degree that is criminal. There must be evidence of an act or omission which indicates a high degree of rashness or negligence. It must be more than a mere act or omission sufficient upon which to base a claim for damage in an action for negligence in a civil court. There is no such evidence on the record nor is there in fact any evidence to show that the accused was criminally negligent in allowing the fire to escape from his land on to his neighbours. It may well be that the

witnesses if fully examined could have provided that evidence. For example it might have been established there the fire was started at the end of a long dry spell, and that to start a fire with the undergrowth like dry tinder by himself without adequate safeguards was a criminally negligent act. The learned Magistrate was not sure in his own mind, because he wrote in his grounds of decision as follows: — "Since there was no evidence to the effect that the accused on seeing this big fire took any steps to put out the fire the Court found it as a fact that the accused was negligent and he was therefore called upon to answer the charge."

The learned Magistrate probably had the second part of section 285 in mind which reads as follows:—

"..... or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred dollars, or with both."

But with respect to the learned Magistrate, that is not what the accused was charged with. If he found that the evidence did not support the charge as drawn he should as he is in duty bound to do under section 173(h) of the Criminal Procedure Code have amended it so that the accused stood charged with knowingly omitting to take such order with a fire as is sufficient to guard against any probable danger to human life. In which case, in view of the evidence of Arshad bin Hj. Asha'ari there would have been a case for the accused to answer.

The appeal must be allowed, the conviction quashed and the fine refunded.

Appeal allowed.

Solicitors: *Pillai & Co.*

WONG NYET WAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Ong J.) July 13, 1962]

[K.L. — Criminal Appeal No. 24 of 1962]

Criminal Law and Procedure — Extortion — Penal Code, s.384 — Alleged extortion by three — Two visits to complainant — First accused present at both but conversation carried out by second accused — Money received by second accused — Whether first accused guilty by reason of his presence at both meetings — Whether further evidence of complicity necessary.

The three accused saw the complainant on October 22, 1961, and the second accused, who was the only one of the three who spoke, asked complainant to join his gang for self-protection. The entrance fee was stated as $7.20 and the monthly subscription $2 per head. On November 1, 1961 the three accused returned to collect the money in accordance with the arrangements with the complainant. The demand for the money was again made by the second accused. All the three accused were arrested immediately thereafter and charged. The first and second accused were convicted in the Sessions Court. The learned President based his conviction of the first accused on the fact of his presence during both visits. The first accused appealed.

Held: the mere fact of presence could be equally consistent with innocence as with guilt. To sustain a conviction it was necessary to show at the minimum that when the demand for money was made at the first visit, the first accused heard it made and knew of it. As there was no such finding of fact in the evidence, the appeal must be allowed.

Cases referred to:—

(1) *Gray* 12 Cr. App. R. 244, 246.

(2) *Wilcox* v. *Jeffery* [1951] 1 All E.R. 464, 466.

(3) *R.* v. *Coney* (1881-82), 8 Q.B.D. 534, 540.

CRIMINAL APPEAL.

Y. S. Lee for the appellant.

Mohd. Isa bin Ibrahim (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant was tried in the Sessions Court at Kajang with two other accused persons upon a charge that they, on November 1, 1961 at a kongsi-house near the Sungei Chua Bridge, Kajang, committed extortion by putting one Low Lang in fear of injury to himself if the sum of $7.20 was not paid to them, an offence punishable under section 384 of the Penal Code. The third accused was acquitted at the close of the prosecution; the appellant (who was the first accused) and the second accused were called upon to enter their defence. The appellant elected to give evidence and did so. The second accused elected to say nothing in his own defence. Both were convicted and sentenced to three years' imprisonment. The second accused has not appealed, but the appellant appeals against both the conviction and sentence.

The relevant facts are as follows: The complainant, Low Lang, was the headman of a bridge construction gang of labourers, 7 male and 2 female, engaged in building a wooden bridge over the Sungei Chua, at the southern outskirts of Kajang, and they lived in a plank hut erected alongside the bridge. While Low was in the company of two others, Yew Ping Ying (P.W.2) and Chong Lum Ying (P.W.3), at about 8 p.m. on October 22, three visitors came to the hut. In a conversation which took place exclusively between Low and the second accused, Low was asked by that accused to join his gang for self-protection. The entrance fee was $7.20 and the monthly subscription $2 per head. Low said he had then only $5 and the second accused agreed to call for payment on November 1. Low's employer came to see his labourers on October 27 and the matter was reported to him. He took Low to the Kajang Police Station where Low made his report, No. 1393/61, to the O.C.P.D. On the night of October 31, the O.C.P.D. instructed a detective police constable and a police constable to set a trap, and supplied them $7 in marked notes. They went to the hut at about 4 a.m. and arranged with Low to remain hidden in the sleeping quarters in the loft, after handing him the $7 for payment. To this sum Low added $44 of his own, making a total of $51. While the labourers were resting after their